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ABSTRACT

This guide explains how the United Kingdom Copyright, Designs and Patents Act 1988 affects librarians and information workers in professional bodies and charitable organizations, and offers guidance on interpreting the main provisions of the law. The guide begins by providing definitions, clarifying what materials are subject to copyright, the length of the copyright period, and copyright ownership. Copyright restrictions and infringement are then addressed, followed by a description of the "fair dealing" provisions of the act and explanations of what materials may be legally copied for use in research or private study, criticism and review, and news reporting. Limits on and conditions governing library copying are also explained, as well as copyright licensing. Copyright provisions for audiovisual and electronic materials are then described. Some miscellaneous advice and guidance for using self-service photocopiers and fax machines and the application of copyright law to specific kinds of publications conclude the guide. A list of prescribed libraries and archives, a copy of the prescribed copyright declaration form, and a list of useful addresses are appended. The publication is indexed by type of publication or medium. (Contains 14 references.) (KRN)

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September 1991
The Library Association

Acknowledgement

In writing these guidelines, the staff of The Library Association gratefully acknowledge the help and advice given by Dr Raymond Wall, Copyright Consultant (Address in Appendix C). Dr Wall was the LA's Copyright Officer from November 1985 until March 1989.

The main texts

Copyright, Designs and Patents Act 1988
London, HMSO. 0 10 544888 5 Price: £12.50

The Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989
S.I. 1989 No. 1212. HMSO. 0 11 097212 0 Price: £1.65

Further advice

Members who need further advice on copyright matters please contact LAHQ in the first instance. Please ask for Sandy Norman or Ross Shimmon. Tel: 071-636 7543, Fax: 071-436 7218, LA-net (BTGold): 79:LLA2000. If you require a consultancy service, please contact Dr Ray Wall (see Appendix C).

Disclaimer

Whilst every care has been taken in compiling these notes, The Library Association, in the absence of clear definitions in the legislation and of court decisions, and in the light of differences of opinion between experts in copyright law, cannot claim that they are definitive. Members in doubt are advised to err on the side of caution and to seek appropriate legal advice, where necessary.

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CONTENTS

Introduction 1

What is copyright? 1
Materials subject to copyright 1
Length of copyright period 1
Who owns copyright? 1

Restrictions 2

Infringement 2
Secondary infringement 2

Photocopying Allowances 3

What is fair dealing? 3
Fair dealing – research and private study 3
Fair dealing – criticism & review 3
Fair dealing – news reporting 3
Copying limits 3
Other allowances 4
Conditions governing library copying 5
Other copying 7

Licensing 7

Audio-visual and electronic copyright 8

Miscellaneous advice and guidance 9

Appendices

Appendix A: Prescribed libraries and archives 13
Appendix B: Prescribed copyright declaration form 14
Appendix C: List of useful addresses 15

Further Reading list 16

Index 17

INTRODUCTION

These notes are mainly intended for libraries or information units in organisations which are non profit-based. For example, libraries in professional bodies and charitable organisations. Although "prescribed" under the Act for certain purposes, such bodies are not prescribed for other purposes.

Separate guides are available for industrial and commercial libraries, school and college libraries, polytechnic and university libraries, public libraries, and libraries in the NHS. Details of how to obtain them are given on p12.

This guide attempts to explain how the Copyright, Designs and Patents Act 1988 affects librarians and information workers and offers guidance on interpreting the main provisions of the law. Where appropriate, references are made to numbered sections of the Act throughout these guidelines.

The Act applies throughout the UK. It is difficult to interpret as many of the definitions are scattered. Some of the terms are undefined leaving them open to be dealt with by case law, agreement with copyright-owner representatives, or by common sense. The main documents listed on the back of the title page should be consulted for more detail when required.

If you have a self-service photocopier in your library, it is extremely important that you take the advice given on p9 – Self-service Photocopiers.

What is copyright?

Copyright gives legal protection to the creators of certain kinds of material so that they can control the way their work may be exploited. Copyright protection is automatic and there is no registration or other formality. Copyright law is also concerned to find a balance between the legitimate interests of creators who wish to be rewarded for the reproduction of their works, and the needs of users to have access to their works.

Materials subject to copyright

Copyright subsists in the following works:

(a) "original literary, dramatic, musical or artistic works" (This includes computer programs and tables and compilations)

(b) "sound recordings, films, broadcasts or cable programmes" (Films include any kind of video recording; cable programmes include online databases. The online service is copyright as a "cable programme service", but the database content is also copyright as a "compilation" under (a))

(c) "typographical arrangements of published editions".

Length of the copyright period

The duration of copyright for (a) is 50 years after the end of the year of the author's death; for (b) 50 years after the end of the year in which they were made, released or first broadcast; and (c) 25 years after the end of the year in which the edition was first published.

Who owns the copyright?

Under (a) it is the creator of the work, also known as the author. In the case of computer-generated work, the author is the person who undertakes the arrangements necessary for the creation of the work. Copyright is owned by the employer if the work is made in the course of employment, unless the contract specifies otherwise.

Under (b), in the case of a sound recording or film, the person who undertakes the arrangements necessary for the making of the recording or film; for broadcasts, it is the person who makes the broadcast; and in the case of a cable programme, the person who provides the service in which the programme is included.

Under (c) it is the publisher.

It should be noted that photographers have now become authors in their own right. The British Photographers' Liaison Committee has published *The photographers' guide to the 1988 Copyright Act.* (see Appendix C, p15 for address)

Those listed above are the initial owners of the copyright who may assign or sell their rights to other persons or organisations.

RESTRICTIONS UNDER THE NEW ACT

Infringement of copyright

The owners of copyright have exclusive rights to their works. This means that, unless otherwise permitted or licensed, only they are allowed:

- to copy the work;
- to issue copies of the work to the public;
- to perform, show or play the work in public;
- to broadcast the work or include it in a cable programme service;
- to make an adaptation of the work or do any of the above in relation to the adaptation. [SS.16–21]

Anyone who does any of these without permission or licence is infringing copyright apart from the specific exceptions allowed under the Act. Copying now includes the storing of copyright material electronically.

Infringement can occur only if more than a 'substantial part' is involved. Although undefined in the Act, this has been established by case law as turning upon significance of content as well as extent. Therefore almost anything could be judged 'substantial' in particular circumstances.

Secondary infringement of copyright

Except as explained in these guidelines, you are not allowed to make copies of copyright materials.

The Act also forbids you to possess in the course of business, sell, hire (or offer to do so), or otherwise distribute infringing copies to such an extent as to damage the copyright owners' entitlement. See, for example, the advice on current awareness and news bulletins on pp9–10.

A copy made for a purpose allowed under the Act can automatically become an infringing copy if used in other circumstances. For example, a single copy quite legitimately made for research or private study is likely to become an infringing copy if re-copied for purposes not allowed under the Act.

Unless you have specific permission you are not allowed to make, import into the UK, sell, hire (or offer to do so), a set of plates or copiable masters designed to copy a work, if you know (or have reason to believe) that a copy is to be used to make infringing copies.

You are not allowed to permit your premises to be used, nor provide equipment, for an infringing performance of a copyright work, unless you have grounds for believing that the performance will not infringe.

Penalties

Although the Act refers to "criminal liability", this is likely to apply to deliberate infringement for business purposes. The most likely penalties for infringing copyright are: (a) an injunction to prevent further infringement; (b) an instruction to 'deliver up' infringing copies to the rights' owners; and (c) the award of damages. It is recommended that members study SS.107–115 in order to understand the possible consequences of infringement.

PHOTOCOPYING ALLOWANCES

Literary, dramatic, musical or artistic works

Fair Dealing

The Library Association's view is that much copying of published copyright material on self-operated copiers in libraries is carried out under the fair dealing provisions of the Act [SS.29–30].

What is "Fair dealing"?

This is an undefined term which does not in itself give specific permission to copy. It is really a defence that could be used by a person accused of infringement if the case were taken to court. Fair dealing may be applied for certain purposes: research or private study (which implies no publication); criticism or review (whether for publication or not); or news reporting. "Dealing" does not necessarily mean a transaction, nor need it apply only to copying. It is rather a form of general behaviour. "Fair" could be decided only in court in respect of specific circumstances and works. It is taken to mean, however, that "fair" dealing would not unfairly deprive owners of copyright a reasonable financial return on their property.

Fair dealing – Research or private study

Anyone may copy from literary, dramatic, musical or artistic works, including typographical arrangements as long as it is (a) fair and (b) for research or private study. 'Private study' is undefined but is taken as excluding group or class study; and 'research' covers any kind including that undertaken for commercial or industrial purposes. The amount that may be copied is not specified nor is the number of copies. If a person copies on another's behalf only one copy may be made.

Any library may also copy on behalf of an individual under this provision (as well as under the library regulations) but must not do anything which the regulations do not permit non profit-based libraries to do. This, however, suggests the advisability of keeping within the same limits for copying under fair dealing as those under the library regulations.

Fair dealing – Criticism & Review

Anyone may copy from any type of work for the purposes of criticism or review provided sufficient acknowledgement is given. It is implied that making multiple copies for *publication* (*ie* a quotation) for this purpose is permitted [S.30(1)] though there are long accepted limits: one extract of no more than 400 words; or several extracts none more than 300 words and totalling no more than 800 words. However, note that libraries are not allowed to make multiple copies for any fair dealing purpose [S.29(3)] nor can it be assumed it is acceptable to copy the typographical layout under this provision.

Fair dealing – News reporting

Anyone may copy from a work (but not photographs) for the purposes of reporting current events, other than reporting done by means of a sound recording, film, broadcast or cable programme, provided sufficient acknowledgement of the source is given. It is implied that making multiple copies for *publication* (*ie* a quotation) for this purpose is permitted [S.30(2)]. However, note that libraries are not allowed to make multiple copies for any fair dealing purpose [S.29(3)] nor can it be assumed it is acceptable to copy the typographical layout under this provision.

Copying limits

The Library Association recommends applying the following limits for research or private study.

Number of copies

Anyone copying on behalf of someone else is restricted to one copy. Persons copying for themselves do not appear to be so restricted, but have to determine what is "fair" to the copyright owner. An example of a situation in which two copies might be regarded as fair might be a person studying a subject which required a visit to a geological site. One copy of a portion of a map or chart might be required to carry out the visit another might be required to record the results of the visit.

Periodicals:

Librarians of prescribed non profit-based libraries are restricted to copying only one article from any periodical issue for their users [S.38(1)]. Accordingly, The Library Association recommends that users making their own copies in libraries should not exceed the same limit. (The British Copyright Council differs from The Library Association. It regards each journal article as a complete work in itself. It therefore takes the view that copying a whole article would not be permissible under the fair dealing provisions).

An article is defined as "any item". When several small items appear together (*eg* news items) they *may* be treated as one item unless they form an unreasonable proportion of the periodical issue. For example, it would probably be unreasonable to expect a user to ensure that a copy was not made of several unwanted items printed on an A4 page alongside the one item required. A contents page counts, however, as one item.

Non-periodical "published editions" of literary , dramatic or musical works (note the exclusion of artistic works)

Books: no more than one complete chapter or a maximum otherwise of 5% of the work (the limit suggested by the British Copyright Council).

Short books, reports or pamphlets without chapters: The Library Association has expressed the view to rights owners that up to 10% of a work should be permissible for short works provided that the extract does not amount to more than 20 pages. This view has not been accepted by the BCC.

OTHER ALLOWANCES

Illustrations and Photographs

Illustrations: these may be copied only if they illustrate or form part of an article from a periodical or are included in extracts from other material. [S.29] They may not be copied on their own since they may be complete works in themselves.

Photographs: a single copy may be made by individuals for their own private use. Non-profit based institutions may make copies of unpublished photographs provided the copyright holder has not prohibited copying of the work.

British Standards

The BSI has agreed that up to 10% of a standard or 2 pages if the standard is short (*ie* under 20 pages), may be copied.

Maps

Ordnance Survey has agreed that up to 4 copies of any Ordnance Survey or OS-based map extract not exceeding 625 sq cms (A4 size) at scale may be supplied.

Crown and Parliamentary publications including HMSO material

HMSO has published a 'Dear Librarian' Letter dated November 1989 which clarifies what may be copied from Crown and Parliamentary copyright publications without seeking permission. A copy of this letter is available from LAHQ or from HMSO. (See list of useful addresses in Appendix C) The complete text was reprinted in the February 1990 issue of the *Library Association Record* pp117–118. It is advisable for librarians to take careful note of the provisions. The main points of this letter are:

Up to 30% of a Bill or an Act of Parliament may be copied within 6 months of publication; after 6 months the complete text may be copied. Multiple copies are allowed.

Up to 30% of a Statutory Instrument may be copied within 3 months of publication; after 3 months the complete text may be copied. Multiple copies are allowed.

Brief extracts totalling no more than 5% from other Parliamentary papers published by HMSO may be copied within 6 months of publication; over 6 months the complete text may be photocopied. Multiple copies are allowed of up to 5% made up of brief extracts.

The Official Reports (Hansard) may be copied freely.

Copying of other non-Parliamentary publications published by HMSO, Government Departments or Crown bodies is restricted to the fair dealing allowance for books, pamphlets and reports unless a CLA licence is held.

Single copies made by, or on behalf of, individuals for their own private use are permitted; multiple and repeat copies are not "fair dealing".

CONDITIONS GOVERNING LIBRARY COPYING

On 1st August 1989, regulations came into force for librarians and archivists, and those acting on their behalf under sections 37–43. These regulations (S.I. 1989:1212), known as the "library regulations" or "library privileges", apply to library staff who carry out photocopying *on behalf of their users and for other libraries*. For users copying on self-service photocopiers, the fair dealing notes apply (see p3). Librarians and information staff who provide a staffed photocopying service to their users and to other libraries, should study a copy of these regulations. (See back of title page for bibliographic details.)

Sections 38–39 of the Act relate only to prescribed libraries or archives (see Appendix A, p13) which are non profit-based. This means that libraries which are *not* prescribed, even though they are non profit-based may not copy under these sections. However, the LA takes the view that *any* library may copy on behalf of individual in-house enquirers under fair dealing [S.29], or act as an intermediary in respect of copying by other libraries for individuals. Section 29 implies that *any* librarian may copy on behalf of an individual for fair dealing purposes, provided that nothing is done which is not permitted under the regulations which apply to prescribed, non profit-based libraries.

However, prescribed non profit-based libraries which copy on behalf of an individual under the library provisons are protected in respect of the amounts which can be copied. There is no such protection for non prescribed libraries which copy for users under fair dealing. Bearing in mind therefore, that fair dealing is not a permission in itself but only a form of defence which may be offered in an infringement case, we recommend that any copying *should keep within the bounds of "fairness"* and conform to the limits suggested by The Library Association (see p3).

The Act requires that, when a copying service is requested, the user must sign a form as specified in detail in the library regulations (see Appendix B, p14). Although this applies to requests for copying in prescribed libraries we recommend that, in order to safeguard the librarian, this should be applied to non prescribed libraries as well.

Librarians must be satisfied that fair dealing declaration forms are valid, insofar as this is possible, which throws new responsibility on librarians. However, staff cannot be expected to check through records retrospectively. The LA therefore considers that recognition of duplicate requests must be left to the memory of the staff concerned. Nonetheless, the Act implies that librarians will act responsibly and it is important to make a positive effort to reflect this trust.

It appears that the requirement for the requester to pay for the copy a sum not less than the cost of production, plus "a contribution to the running expenses of the library", need not be applicable to non prescribed services copying for its own clientele in response to requests. It is, however, an essential requirement for libraries copying for members of the public.

Inter-library requests for photocopies are of two kinds:

Firstly in response to requests for research or private study copies accompanied by the necessary declaration form (Appendix B p14), The Library Association takes the view that *any* library may act as an intermediary and receive copies for passing on to individuals concerned (these copies must not be put into stock).

Secondly, any library in the UK may make a copy in response to an interlibrary request for copying for stock, provided the request comes from a non profit-based library or archive and is accompanied by a letter (not a declaration form) as detailed in the regulations. Profit-based libraries are *not* prescribed for the purpose of receiving copies for their own stock.

Summary of the regulations:

Apart from (2) below, the regulations apply to non profit-based prescribed library services but are included here because all librarians should be aware of them.

1. Staffed copying service

Librarians of prescribed non profit-based libraries may provide copies of written or printed material for research or private study subject to the following conditions (note that "research" embraces all kinds of research, including commercial research, "private study" excludes class or group study):

(a) that the requester signs a form declaring that:

(i) a copy of the same material has not previously been supplied by any librarian;

(ii) the material is for the purposes of research or private study only;

(iii) the requester is not aware that any other person has requested or is about to request a copy of substantially the same material for substantially the same purpose (these terms are not defined);

(b) that the librarian does not get requests for substantially the same material at substantially the same time (these terms are not defined);

(c) that no more than one copy of an article per periodical issue or no more than a reasonable proportion from a published work is requested; ("reasonable proportion" is undefined but it is suggested that the guidelines on pages 3–4 are followed);

(d) that the librarian makes a charge for the copy to recover the costs of production, together with a contribution towards the general expenses of the library.

2. Inter-library copying for stock

Librarians are also allowed to make and supply to a non profit-based library, a copy of any article in a periodical or, as the case may be, of the whole or part of a published edition of a literary, dramatic or musical work required for stock by that other library, subject to the following conditions:

(a) that the requesting library is not furnished with more than one copy of the same article or of the whole or part of the published edition;

(b) that where the request is for more than one article from a periodical, or the whole or part of a published edition, the requesting library satisfies the librarian (in a written statement) that they do not know and are unable to find out the name and address of the person or persons who could authorise the copying (for example an out-of-print item whose publisher is no longer in business);

(c) that the librarian makes a charge for the copy to recover the costs of production, together with a contribution towards the general expenses of the library.

3. Replacement copies

Librarians of non profit-based libraries may also make copies of items in order to replace them in the permanent collection of their library or archive or in the permanent collection of another non profit-based library or archive, subject to the following conditions:

(a) that the item is held in the permanent collection for reference only, or is held in the permanent collection and is available for loan only to other libraries for reference purposes;

(b) that it is not reasonably practical for the item to be purchased (for example an out-of-print item);

(c) that if the copy is for another prescribed library, then the other library must declare in a written statement:

(i) that the copy has been lost, destroyed or damaged;

(ii) that it is not reasonably practical to purchase a replacement;

(iii) that the copy will be for reference purposes only;

(d) that the librarian makes a charge for the copy to recover the costs of production, together with a contribution towards the general expenses of the library.

4. Unpublished works

Librarians of non profit-based libraries are also allowed to copy the whole or part of certain unpublished literary, dramatic or musical works from documents held in the library or archive, subject to the following conditions:

(a) the requester signs a form declaring that:

(i) a copy of the same material has not previously been supplied by any librarian;

(ii) the material is for the purposes of research or private study only;

(iii) that the requester is reasonably sure that the document has not been published prior to being deposited in the library or archive, and that the copyright owner has not prohibited the copying of the work;

(b) that only one copy is supplied to the requester;

(c) that the librarian makes a charge for the copy to recover the costs of production, together with a contribution towards the general expenses of the library.

Much copying of unpublished documents in special libraries consists of internal documents of the organisation concerned. Unpublished personal manuscripts are now copyright only until 50 years from the death of the author [S.12], not in perpetuity (or until publication) as under previous legislation. Note, however, that material already in copyright when the Act came into force (*ie* works by an author who died before August 1989) remain in copyright until 1st January 2040. [Sch.1 S.12(4)]

OTHER COPYING

Parliamentary and Judicial Proceedings

Copyright is not infringed by copying for the purposes of parliamentary or judicial proceedings [S.45]. It is believed that the Law Society of England and Wales and representatives of rights owners have agreed that in respect of published works this applies only if proceedings have begun. This does not apply in Scotland.

Royal Commission or Statutory Enquiry

Copyright is not infringed by anything done for the purposes of the proceedings of a Royal Commission or statutory enquiry.

Anonymous works

Copying is allowed from a work which, after reasonable inquiry, is believed to be anonymous, and that it is reasonable to assume the copyright has expired or that the author died over 50 years ago. [S.57]

Abstracts

Abstracts accompanying scientific or technical articles in periodicals may be copied and issued to the public, unless there is a licensing scheme available. [S.60]

LICENSING

Various individual forms of licensing already exist, especially for periodicals, such as copying fees for articles made in excess of legal allowances. The Act could not impose such "point-of-sale" methods because licensing made compulsory by statute would contravene the Berne Convention on Copyright. The UK Act however, encourages the use of the law of contract for collective licensing. Licensing "schemes", must cover more than one rights owner and work, and the aim is to foster "blanket licensing" to cover all materials of interest to a user group.

The main licensing body for reprographic copying from most UK books and periodicals, and those of an increasing number of other countries with which it has reciprocal agreements, is the Copyright Licensing Agency (CLA) (Address in Appendix C, p15).

Contracts such as licences are a matter for agreement between parties, normally outside legislation. However, an important feature of the Act is the establishment of a Copyright Tribunal to arbitrate on the terms and conditions of licensing schemes.

Most educational establishments are now licensed by the Copyright Licensing Agency to make multiple copies within clearly defined limits from most books, journals and periodicals for class purposes.

The CLA is currently in discussion with the CBI about possible methods of licensing copying in industry and commerce and similar discussions are being held with professional practices. At present (September 1991) there are no discussions taking place between the CLA and non-commercial organisations. The Library Association will keep its members informed if any negotiations begin.

AUDIO-VISUAL AND ELECTRONIC COPYRIGHT

There is no such thing as fair dealing for research or private study in respect of sound recordings, films, broadcasts, or cable programme services (including databases).

Computer programs

Neither "computer" nor "programs" is defined in the Act. Computer programs are included in the definition of literary works and this remains true whatever the physical format of a program – printed matter, tape or disk – because they are merely copies and carry no copyright in themselves. The Act makes it clear that "storing the work in any medium by electronic means" is an infringement. [S.17(2)] and any copying or adapting of a copyright computer program is also illegal unless made incidentally in the course of running a program [S.21(4)]. The LA therefore recommends that computer programs should not be copied without permission. The Act does not even give statutory permission to make back-up copies of programs, although in practice it is the standard and recommended procedure, and permission is usually given from program producers. The EC Green Paper on copyright, however, suggests that the making of back-up copies should be allowed in future legislation.

Where programs are supplied to libraries and archives under licence or any other contractual conditions which restrict copying, this must be adhered to. Networking, whereby a program is shared, is a restricted act unless there is a licence.

Databases

The contents of databases are literary works and protected by copyright. When they are put into an online database accessible to the public via a telecommunications system, they are cable programmes for the purposes of UK copyright law. The online database itself then becomes a cable programme service. Separate copyright exists in the service itself in respect of particular cable programmes for 50 years from first inclusion of the programmes.

Any downloading would therefore infringe the copyright in the service. There is not likely to be a copyright problem in downloading from in-house databases as they are usually produced internally for use by employees, but downloading from an online database is permitted only under the terms of the licence from the database owner as part of the contract. Subscribers should look at the terms of their contracts to find the extents of downloading. Attempts are being made to obtain some basic standards of downloading to be applied in the absence of any statement from an online producer. However, there should not be an objection to going online and downloading the results of a search and printing it out for a user, as otherwise there would be no point in subscribing to the service.

CD-ROMs are not made available via a telecommunications system and are therefore not cable programme services. They have no copyright as far as physical format is concerned as they are merely electronic copies. But the producer may own the literary work as compiler and there will also be copyright in the literary works on the CD-ROM. If a CD-ROM is purchased outright, unless conditions of sale have been applied which contractually modify the situation, downloading is restricted to fair dealing provisions. As yet there is no consensus as to what may constitute fair dealing in these circumstances. In most cases of leasing however, the conditions relating to downloading, printing and networking of the contents of the CD-ROM should be found in the supply contract.

Playing of sound recordings

The playing of sound recordings in public needs to be licensed by two bodies. Phonographic Performance Ltd can license the public performance of the sound recording itself, whilst the Performing Rights Society, which should be consulted in the first instance, can license the public performance of the musical work (addresses in Appendix C, p15).

Clubs or societies which are not conducted for profit, and whose main objects are charitable or otherwise concerned with the advancement of religion, education or social welfare, are allowed to play sound recordings, provided any charge for admission is applied solely for the purposes of the organisation [S.67]. However, the playing of any sound recordings in public requires a licence from the Performing Rights Society.

Free public showing or playing of a broadcast or cable programme

As long as the public is not charged for admission to wherever the showing is to take place, this is allowed. [S.72]

Time-shifting

The private and domestic copying of a broadcast or cable programme *ie* making a video of a TV programme, or a tape of a radio programme, for use at a more convenient time is now allowed. This is familiarly called time-shifting [S.70]. This provision does not allow libraries to record programmes.

Photograph of a television broadcast or cable programme

A photograph or slide may be made of the whole or part of an image forming part of a television broadcast or cable programme for *private and domestic use*. [S.71]

Recording for archival purposes

The National Film Archive, the Scottish Film Archive, the British Library and the Music Performance Research Centre have been designated by the Secretary of State as able to record broadcasts or cable programmes for archival purposes [S.75]. No other libraries are so designated.

MISCELLANEOUS ADVICE & GUIDANCE

Self-service Photocopiers

The responsibility for any photocopy machine within the library premises rests with the librarian. Any infringement which occurs on such machines could therefore involve the library staff and the employing organisation if a case were brought to court. However, The Library Association's view is that self-operated photocopiers may continue to be housed in libraries provided:

(a) a prominent notice is displayed alongside the photocopiers in a position that users will find it difficult to ignore. The notice should make it clear that copyright is protected by law. It should also outline the limits of permissions and advise users to ask staff when in doubt; (laminated posters can be obtained from LAHQ, see p12 for details)

(b) similar information is incorporated in publicity material or library user guides and in the library's regulations;

(c) user education and induction programmes (for staff as well as students) also cover copyright;

(d) library staff training programmes include copyright so that appropriate advice can be given to users; line managers should be included in such programmes.

Management should also consider cautionary statements in staff conditions of service and library conditions of access. The British Copyright Council suggests that library staff should be prepared to intervene if they observe apparent infringements. The LA believes that this suggestion is fraught with difficulties.

If the above precautions are followed then this should enable an adequate defence to be prepared, if need be, in the event of an infringement case involving an individual's transgression being brought against the organisation as a whole.

Using Fax machines

Technically, sending a copy of copyright material – for example a journal article – by fax means (a) storing it in an electronic form, and (b) making a copy which is "transient or incidental to some other use of the work". These are both infringements under the Act. However, if the article were copied under the provisions of S.29 and/or SS.38–39 of the Act it is unlikely that a case would be brought to court. It is advisable to destroy photocopies made by the supplying librarian in order to place in the fax machine once transmission has been completed.

The Library Association has been advised that sending a photocopy declaration form by fax in order to save time is acceptable. Fax copies are not permanent so originals will still be needed for record keeping (see Copyright Declaration Forms p10)

Current Awareness Bulletins

Anyone may produce a current awareness bulletin if the data has been input manually and is not obtained by photocopying contents pages or downloading from a bibliographic database. S.60 allows abstracts published along with articles in scientific or technical journals to be incorporated in a current awareness bulletin either by photocopying or re-keying, unless a licensing scheme becomes available to cover the copying of such abstracts. The interpretation of "scientific" or "technical" may be assumed to be broad.

The Act clearly authorises *prescribed non profit-based* libraries to provide a copying service to any member of the public in response to requests. However any library which advertised a copying service in direct association with a bulletin, especially if distributed beyond the normal clientele or catchment area, could be considered to be soliciting requests rather than responding to them. Such services could damage rights-owner markets because local demand for the original media concerned might be reduced if reliance is placed on current awareness and copying. Therefore, The Library Association recommends that any library sending bulletin copies outside its own clientele or catchment area should include the following statement:

> "Those wishing to obtain copies of items in this issue should consult their own (or "local") libraries."

It is also preferable to include standard declaration forms only in issues distributed to the library's own clientele. If forms are included in all copies it should be made clear that they are for use only by registered members in the relevant catchment area or "closed" clientele.

Non prescribed libraries may copy under fair dealing [S.29] but are not specifically authorised in the same way as prescribed libraries (see Appendix A). That is, any copying could be the subject of litigation on the basis of what may be "fair" if a publisher so wished. Therefore we recommend that a non prescribed library should only distribute bulletins and provide a copying service "in-house", unless an arrangement is made with all publishers concerned.

The Library Association's view is that it is an infringement to make multiple copies of relevant journal articles (this includes contents pages) as part of an SDI service and disseminate them to users. However, it is unlikely that rights owners would object if you wish to display or circulate a *single* copy of a journal contents page in lieu of circulation, provided it was only to your users.

The practice of making copies of every article in each bulletin issue to make it easier to make further copies in response to need, should cease unless this is covered by a licence or permission has been granted.

News Bulletins

Although one of the fair dealing purposes is "reporting current events" [S.30(2)], this does not mean that libraries are permitted to make multiple copies. Libraries which may wish to issue a bulletin comprising photocopied extracts from newspapers should consult the publishers concerned.

Topic Files

There is no statutory provision for non prescribed libraries to make copies of newspaper or journal articles to place in topic files. Therefore, these libraries should rely upon original copies or seek permission from rights owners or ensure that their requirements are covered by whatever form of licensing is agreed upon for their organisations.

Copyright Declaration Forms

For legislative purposes these forms should be kept for at least 6 years and a day. An action under the legislation may be made at any time until six years after the alleged infringement occurred. There is nothing in the Act to say in what order they must be kept. See also page 9 *Using Fax Machines.*

Translations

Translating a whole work for commercial purposes would mean making an adaptation and would be an infringement. Permission would have to be sought from the author. If permission were granted, then the copyright in the new work would belong to the translator although the original copyright would stay with the author.

If a user wishes to translate any copyright work, even for research or private study purposes, the copyright owner must be consulted. This is not only because of the requirement for permission under S.21(3)(a)(i), but also because of the author's moral rights [S.77–89] which imply that the author should be made aware of a risk of misinterpretation.

Photographs

There is no restriction on performing or showing of artistic works, including photographs.

Please note that photographers now defined as authors have a legal right to have a reasonably prominent credit whenever a work is published, exhibited or shown in a film or on television. This right does not apply to employees who take photographs under contract of employment, unless the employer allows them to retain their rights.

For more information please see *The Photographers' Guide to the 1988 Copyright Act* published by The British Photographers' Liaison Committee. (See Appendix C, p15 for address)

Microforms

Microforms which reproduce an original text without amendment (for example, a microfilmed report) should be treated in the same way as the original report. The microform is a copyright photograph, but only a facsimile copy of works on it, and copies have no copyright in themselves. A microform publisher might own the additional rights as editor or compiler of an anthology in which case permission to copy may be necessary. Otherwise only the rights of the authors and publishers of the original printed matter apply to ordinary sized copying.

Foreign Material

Under the terms of the Berne Convention and the Universal Copyright Convention, all foreign material (with the exception of material from China, Saudi Arabia and Malaysia and a few other countries which do not belong) has the same protection under the Act as UK material.

Committee Papers

It seems clear that multiple copies required by a committee for consideration at a meeting would not be regarded as fair dealing for "research". "Private study" is clearly not applicable in the case of committees.

It has been argued that "criticism or review" is an appropriate purpose for committees. Multiple copies are allowed for this fair dealing purpose. However, the intention was probably to allow quotations to be made from published works in reviews of those works published in newspapers and magazines. The British Copyright Council suggests single extracts of no more than 400 words or several totalling no more than 800. It also appears that permission is likely to be confirmed for copying the text rather than the typographical layout. So photocopying an extract from a report would not be allowed, although re-typing it could be. Similar considerations apply to fair dealing for "news reporting".

On the other hand, it is in the interests of the publishers and copyright owners of many documents that other organisations consider them and respond to them. This is especially so in the case of consultative documents. The following 'rules of thumb' are offered to assist members preparing committee papers:

(a) *Circular letters* and similar documents seeking the views of individuals and organisations: it may be assumed that copies may be made without permission.

(b) *Unpriced consultative documents:* if an unpriced document is labelled 'consultative' or similar, it may be assumed that the publisher wishes it to be widely circulated in order to receive comments. In most cases, it will probably be acceptable to copy for committees. Free additional copies may be easily available from the publisher in which case this may be the preferred option.

(c) *Priced consultative documents:* it would be wise to obtain permission to copy either an extract or the whole document. An extract worth copying for a committee is likely to be a 'substantial' part.

(d) *HMSO publications:* (see p4)

(e) *All other priced publications:* it is advisable to obtain permission from the publishers.

Many publishers will freely give permission to copy for committee purposes, if asked. All copies made for committee should have a full bibliographical reference, the source of 'official' copies and should be marked "for committee consideration only". It cannot be assumed that committee members may make further copies to circulate in their workplace for example. Unless specific permission has been obtained, it is advisable not to include copies of copyright documents with sets of committee papers which are sent to other people for information only. Sources of supply of the original documents may instead be included on agendas.

Whole works

Whole works may not be copied without permission. Examples of whole works include: poems, signed encyclopaedia articles (although it may be possible to copy extracts from unsigned ones), journal contents pages, indexes, knitting patterns, examination papers.

The British Copyright Council regards journal articles as whole works. The Library Association view is that individuals using self-operated copiers (as well as librarians from non prescribed organisations acting on behalf of users) may copy a whole journal article for research or private study.

Permission

If you want to do anything which you think or you know is a restricted act, there is nothing to stop you approaching the rights owners for permission. Provided you are not doing it for commercial reasons, many of them will probably grant permission free of charge.

BEST COPY AVAILABLE

Profit basis

The Act's phrase "established or conducted for profit" applies to the parent organisations as well as to the services themselves, but the profit aim is not defined. It seems reasonable to assume that it means that the organisation or service concerned has the objective of attaining an excess of income over expenditure. The mere selling of services to recover a proportion of the expenditure, or even all the direct costs, without covering overheads and without making a true surplus would not be construed as "established or conducted for profit". If a service were split off as an independent business without subsidy, it would then become "established or conducted for profit". However, libraries in industry, commerce and professional practices (*eg* firms of architects, lawyers etc.) are clearly profit-based.

Prohibitive statements

Many books and some journals contain statements which seem to forbid any copying. By purchasing them for the library, it could be said that librarians had entered into an implied contract with the publishers. Where copying is permitted by the Act, it is most unlikely that a rights owner would bring a claim of infringement of "implied contract" to court because of some phrase which had been put on an item. The law on unfair contract terms could be used in defence in any case, should a need arise.

In general, therefore, it is advised that prohibitive or restrictive phrases, which seek to limit copying or use of an item to a greater extent than statute, may be ignored. Only if conditions of sale were agreed or a full contract were entered into could a rights owner have a sound case on contractual grounds. Contract law can override statute law in such circumstances. Those worried about conditions of sale and wishing to be safe, could put standard phrases of their own on order forms, indicating that the item is required for a library and will be treated like the rest of the stock in accordance with statute, thus generating their own contractual arrangements.

In conjunction with this guide, The Library Association has produced the following guides, single copies of which are available free to members: (£5 each to non members)

Copyright in industrial and commercial libraries

Copyright in National Health Service libraries

Copyright in school and college libraries

Copyright in polytechnic and university libraries

*Copyright in public libraries**

* also contains material relating to national libraries, archival services and libraries in government departments.

Members requiring multiple copies of any of the guides are welcome to reproduce them locally, provided due acknowledgement is given. Alternatively, we can supply multiple copies at the following rates:

	Members	**Non-members**
2–10	£3 (each)	£5 (each)
11–99	£2 (each)	£4 (each)
100+	£1 (each)	£3 (each)

Write or phone for these guides to Copyright Guides, Professional Practice Division, The Library Association, 7 Ridgmount Street, London WC1E 7AE (071–636 7543)

Please send a completed address label if possible. **Cheques (made payable to The Library Association) with order please.** If you cannot send payment with your order we will send you a pro-forma invoice and supply copies only after payment has been received.

The Library Association has also produced an attractive A3 size laminated poster to be displayed beside photocopy machines. The costs per copy are: £2.50 (non-members £3.50) for up to 4 copies; £2.00 (£3.00 non-members) for 5–10; and £1.50 (£2.50 non-members) for 11 or more. **Please send cheque with order** to Copyright Posters, Professional Practice Division, The Library Association, 7 Ridgmount Street, London WC1E 7AE. It would also be helpful if an adhesive self-addressed label could be sent with orders.

APPENDIX A

Prescribed Libraries and Archives

1. Public libraries
   Any library administered by–
   (a) a public library authority in England and Wales
   (b) a statutory library authority in Scotland
   (c) an Education and Library Board in Northern Ireland

2. National Libraries
   British Library
   National Library of Wales
   National Library of Scotland
   Bodleian Library, Oxford
   University Library, Cambridge

3. Libraries in educational establishments (see note (f))
   A library of a school
   Libraries of universities which are empowered to award degrees
   Libraries of institutions providing further or higher education

4. Parliamentary and government libraries

5. Local Government Libraries
   Any library administered by–
   (a) A local authority in England and Wales
   (b) A local authority in Scotland
   (c) A district council in Northern Ireland

6. Other libraries
   Any library which encourages the study of bibliography, education, fine arts, history, languages, law, literature, medicine, music, philosophy, religion, science (including natural and social science) or technology.

   Any library outside the UK which encourages the study of the above subjects.

Source: S.I. 1989:1068 and S.I. 1989:1212

NB: (a) All UK *non-profit-based* services in the above categories are prescribed for the purposes of providing a service to the public under SS.38, 39 and 43; *also* for copying such archival or preservation purposes as are covered by SS.41 and 42, whether within their own stock, or made for another non profit-based service, or received from any other library; and also for acting on behalf of individuals under fair dealing [S.29].

(b) *Any* UK library, including a profit-based service, can copy on behalf of individuals under fair dealing [S.29]. However, it is advised that profit-based services should avoid copying for members of the public except in association with a fair dealing declaration received via another library as in (c).

(c) It is advised that *any* UK library can act as an intermediary, and make and supply copies in response to "research or private study" requests (Appendix B) from individuals via other libraries.

(d) Any library or archive is prescribed to *copy* for other libraries under SS.41, 42 and 43 but only a non profit-based library, as described above, is allowed to *receive* copies for its own stock.

(e) non profit-based libraries *outside the UK* as in (6) above are prescribed for receiving copies made for them by a UK library under SS.41 and 42.

(f) Some institutions have been concerned about their apparent exclusion from the definition of "educational establishment" in S.I. 1989:1068, for example the nursing colleges. Exclusion would mean lack of claim of licensing eligibility for off-air recording, and ability to show educational videotapes and films. Some private institutions were also concerned at their possible exclusion. The S.I. appeared to cover, apart from universities and polytechnics and colleges thereof, only local authority controlled institutions.

   The Department of Education and Science has now affirmed that the definition in S.I. 1989:1068 is to be taken as covering:

   all institutions providing further education as defined in subsection 2 (of [S.41] of the Education Act 1944, as amended by the Education Reform Act 1988, however financially funded.

APPENDIX B

Prescribed copyright declaration form ‡
from S.I. 1989:1212

DECLARATION: COPY OF ARTICLE OR PART OF PUBLISHED WORK

TO:
The Librarian of ..... Library
[Address of Library]

Please supply me with a copy of:
*the article in the periodical, the particulars of which are [
]

*the part of the published work, the particulars of which are [
]

required by me for the purposes of research or private study

I declare that–

(a) I have not previously been supplied with a copy of the same material by you or any other librarian;

(b) I will not use the copy except for research or private study and will not supply a copy of it to any other person; and

(c) to the best of my knowledge no other person with whom I work or study has made or intends to make, at or about the same time as this request, a request for substantially the same material for substantially the same purpose.

I understand that if the declaration is false in a material particular the copy supplied to me by you will be an infringing copy and that I shall be liable for infringement of copyright as if I had made the copy myself.

Signature .....†

Date .....

Name .....

Address .....

.....

---

* Delete whichever is inappropriate.

† This must be the personal signature of the person making the request.
A stamped or typewritten signature, or the signature of an agent, is NOT acceptable.

‡ A similar declaration form for unpublished works is also to be found in SI. 1989:1212

APPENDIX C

List of useful addresses

In any query over copyright issues it is advisable that you approach The Library Association in the first instance. Please ask for Sandy Norman or Ross Shimmon.

The British Copyright Council
29 Berners Street, London W1P 4AA (071–359 1895)

The British Photographers' Liaison Committee (incorporating The Committee on Photographic Copyright)
9–10 Domingo Street. London EC1 0TA (071–608 1441)

British Standards Institution
Linford Wood, Milton Keynes MK14 6LE (0908 220022)

Copyright Licensing Agency
90 Tottenham Court Road, London W1P 9HE (071–436 5931)

Department of Trade & Industry
Intellectual Property & Copyright Dept, State House, 66–71 High Holborn, London WC1R 4TP (071–831 2525)

HMSO
St Crispins, Duke Street, Norwich NR3 1PD (060369 62211)

National Council for Educational Technology
3 Devonshire Street, London W1N 2BA (071–580 7553/071–636 4186)

Ordnance Survey
Copyright Branch, Romsey Road, Maybush, Southampton SO9 4DH (0703 792000)

Performing Rights Society
29–33 Berners Street, London W1 (071–580 5544)

Phonographic Performance Ltd
Ganton House, 14 Ganton Street, W1 (071–437 0311)

Raymond A. Wall, PhD, FLA, MIInf Sc
Copyright Consultant, 7 Ullswater Avenue, Barrow-upon-Soar, Leics LE12 8QR (0509 416556)

Further reading list

Cornish, G.
Copyright: interpreting the law for librarians
LA Publishing Ltd, 1990 0 85365 709 2
Price: £12.95 (£10.36 to LA members)

Cornish, W.R.
Intellectual property: patents, copyright, trade marks and allied rights
2nd ed. Sweet & Maxwell, 1989 0 42124 310 4

Crabb, Geoffrey
Copyright clearance: a practical guide
3rd ed. National Council of Educational Technology, 1989

de Freitas, Denis
The law of copyright and rights in performances
British Copyright Council, 1990 0 901737 05 4

Dworkin, Gerald and Taylor, Richard D
Blackstone's guide to the Copyright, Designs and Patents Act, 1988: the law of copyright and related rights
Blackstone Press, 1989 1 85431 023 2
(includes a copy of the *Copyright, Designs and Patents Act 1988*)

Great Britain
Copyright, Designs and Patents Act 1988
London, HMSO. 0 10 544888 5 Price: £12.50

Merkin, Robert
Richards Butler on copyright, designs and patents: the new law
Longman, 1989 0 85121 565 3

Photocopying from books and journals
British Copyright Council, 1990

The Photographers' guide to the 1988 Copyright Act
British Photographers' Liaison Committee, 1989
0 9514671 0 7

Wall R.A. Copyright: the new Act of 1988
The Law Librarian, **21**(1), April 1990, pp18–25.

Relevant Statutory Instruments

The Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts) (Guild Sound and Vision Limited) Order 1990
S.I. 1990 No. 878 HMSO. 0 11 003878 9
Price: £1.70

The Copyright (Certification of Licensing Scheme for Educational Recording of Broadcasts and Cable Programmes) (Educational Recording Agency Limited) Order 1990.
S.I. 1990 No. 879 HMSO. 0 11 003879 7
Price: £0.95

The Copyright (Educational Establishments) (No 2) Order 1989
S.I. 1989 No. 1068 HMSO. 0 11 097068 3
Price: £0.50

The Copyright (Librarians and Archivists) (Copying of Copyright Material) Regulations 1989
S.I. 1989 No. 1212. HMSO. 0 11 097212 0
Price: £1.65

INDEX

abstracts, 7
  current awareness bulletins, 9

anonymous works, 7

articles, 10

artistic works, 1
  showing, 10

back-up copies
  computer software, 8

Berne Convention, 7, 11

books, 4

British Copyright Council, 11

British Standards, 4

broadcasts, 1
  archival recording, 9
  playing in public, 8

cable programmes, 1, 8
  archival recording, 9
  showing in public, 8

CD–ROMs, 8

charging, 5, 6, 7

committee papers, 11

compilations, 1

computer programs, 1, 8

contents pages, 4, 9, 10, 11

contract law, 7, 12

Copyright Licensing Agency, 7

Copyright Tribunal, 7

criticism, 3

current awareness bulletins, 9

databases, 8

declaration forms, 5, 10
  current awareness bulletins, 10
  sending by fax, 9

downloading, 8

dramatic works, 3

EC, 8

encyclopaedia articles, 11

examination papers, 11

fair dealing, 3, 4, 5, 8, 10, 13

fax, 9

films, 1

foreign material, 11

HMSO, 4

illustrations, 4

indexes, 11

inter-library requests, 5

judicial proceedings, 7

knitting patterns, 11

library regulations, 5

licence
  CLA, 4
  computer software, 8

literary works
  computer programs, 8

maps, 4

microfilms, 11

multiple copying
  criticism or review, 3
  educational licence, 7
  news reporting, 3

musical works, 1

networking, 8

news bulletins, 10

news reporting, 3

newspapers, 10

online databases, 1, 8

Ordnance Survey, 4

pamphlets, 4

Parliamentary proceedings, 7

Parliamentary publications, 4

penalties for infringement, 2

periodical articles, 6

periodicals, 3

photocopiers, 3, 5, 9

photographic works, 1, 3, 4, 10

photographs
  television programme, 9

poems, 11

poster, 9

private study, 3

profit basis, 12

prohibitive statements, 12

replacement copying, 6

reports, 4

research, 3, 6

review, 3

Royal Commission, 7

SDI service, 10

self-service photocopiers, 3, 5, 9, 11

slides, 9

sound recordings, 1
  playing in clubs, 8

statutory enquiry, 7

tables, 1

time-shifting, 9

translations, 10

unpublished works, 6, 7

videos, 1, 14

whole works, 11